

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE STATIC RANDOM ACCESS MEMORY  
(SRAM) ANTITRUST LITIGATION

No. 07-md-01819 CW

ORDER DENYING  
SAMSUNG'S MOTION  
FOR CERTIFICATION  
OF INTERLOCUTORY  
APPEAL  
(Docket No. 1215)

Defendants Samsung Electronics Co., Ltd. and Samsung Semiconductor, Inc. (collectively Samsung) move for an order certifying an interlocutory appeal under 28 U.S.C. § 1292(b) of this Court's December 7, 2010 Order Denying Defendants' Joint Motions to Decertify Plaintiff Classes, Docket No. 1191, and December 13, 2010 Order Denying Part of Defendant Samsung's Motion for Summary Judgment, Docket No. 1204. In both Orders, the Court found that Direct Purchaser (DP) Plaintiffs' named representative, Westell, Inc., has standing to pursue its individual claims and to represent the Direct Purchaser class in the present action. DP Plaintiffs oppose the motion. Having considered all of the parties' submissions, the Court DENIES Samsung's motion.

LEGAL STANDARD

Pursuant to 28 U.S.C. § 1292(b), a district court may certify an appeal of an interlocutory order only if three factors are

1 present. First, the issue to be certified must be a "controlling  
2 question of law." 28 U.S.C. § 1292(b). Establishing that a  
3 question of law is controlling requires a showing that the  
4 "resolution of the issue on appeal could materially affect the  
5 outcome of litigation in the district court." In re Cement  
6 Antitrust Litig., 673 F.2d 1020, 1026 (9th Cir. 1982) (citing U.S.  
7 Rubber Co. v. Wright, 359 F.2d 784, 785 (9th Cir. 1966)).

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9 Second, there must be "substantial ground for difference of  
10 opinion" on the issue. 28 U.S.C. § 1292(b). This is not  
11 established by a party's strong disagreement with the court's  
12 ruling; the party seeking an appeal must make some greater  
13 showing. Mateo v. M/S Kiso, 805 F. Supp. 792, 800 (N.D. Cal.  
14 1992).

15 Third, it must be likely that an interlocutory appeal will  
16 "materially advance the ultimate termination of the litigation."  
17 28 U.S.C. § 1292(b); Mateo, 805 F. Supp. at 800. Whether an  
18 appeal may materially advance termination of the litigation is  
19 linked to whether an issue of law is "controlling" in that the  
20 court should consider the effect of a reversal on the management  
21 of the case. Id. In light of the legislative policy underlying  
22 § 1292, an interlocutory appeal should be certified only when  
23 doing so "would avoid protracted and expensive litigation." In re  
24 Cement, 673 F.2d at 1026; Mateo, 805 F. Supp. at 800. If, in  
25 contrast, an interlocutory appeal would delay resolution of the  
26 litigation, it should not be certified. See Shurance v. Planning  
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1 Control Int'l, Inc., 839 F.2d 1347, 1348 (9th Cir. 1988) (refusing  
2 to hear a certified appeal in part because the Ninth Circuit's  
3 decision might come after the scheduled trial date).

4 "Section 1292(b) is a departure from the normal rule that  
5 only final judgments are appealable, and therefore must be  
6 construed narrowly." James v. Price Stern Sloan, Inc., 283 F.3d  
7 1064, 1068 n.6 (9th Cir. 2002). Thus, the court should apply the  
8 statute's requirements strictly, and should grant a motion for  
9 certification only when exceptional circumstances warrant it.

10 Coopers & Lybrand v. Livesay, 437 U.S. 463, 475 (1978). The party  
11 seeking certification of an interlocutory order has the burden of  
12 establishing the existence of such exceptional circumstances. Id.  
13 A court has substantial discretion in deciding whether to grant a  
14 party's motion for certification. Brown v. Oneonta, 916 F. Supp.  
15 176, 180 (N.D.N.Y. 1996) rev'd in part on other grounds, 106 F.3d  
16 1125 (2d. Cir. 1997).

#### 17 DISCUSSION

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20 Samsung's motion for certification fails to satisfy the  
21 requirements for certifying an interlocutory appeal. First, while  
22 courts have certified for interlocutory appeal orders deciding  
23 standing, the mere existence of the standing issue, alone, has not  
24 prompted courts to grant certification. The district court  
25 certified an interloctory appeal in In re Coordinated Pretrial  
26 Proceedings in Petroleum Prods. Antitrust Litig., 691 F.2d 1335,  
27 1338 (9th Cir. 1982), in light of the Supreme Court's intervening  
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1 decision in Illinois Brick v. Illinois, 431 U.S. 720 (1977). In  
2 In re Wyoming Tight Sands Antitrust Cases, the district court  
3 certified an interlocutory appeal after a case upon which it  
4 relied in issuing its order was been withdrawn, and the question  
5 pertained to an area of substantial dispute. 695 F. Supp. 1109,  
6 1119 (D. Kan. 1988); see also, Atlantic City Elec. Co. v. General  
7 Elec. Co., 207 F. Supp. 613, 620 (S.D.N.Y. 1962). The district  
8 court in In re Cintas Corp. Overtime Pay Arbitration Litigation  
9 found that certification was particularly appropriate because it  
10 enhanced the coordination of multidistrict actions by allowing a  
11 single court to review the jurisdictional issue presented. 2007  
12 WL 1302496, at \*3 (N.D. Cal.). The appeal that Samsung seeks  
13 permission to pursue does not have the same implications with  
14 regard to coordinating this case. Nor do the cases cited support  
15 Samsung's more general proposition that certifications for  
16 interlocutory appeal in antitrust cases are granted routinely  
17 where the issue of standing is in dispute.

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20 Rather, certification in this case would likely delay  
21 resolution of the case. Trial is scheduled to begin on February,  
22 2011. The parties have invested substantial time and energy to  
23 prepare for trial. Furthermore, the resolution on appeal of the  
24 standing question may not materially affect the outcome of the  
25 litigation because DP Plaintiffs have repeatedly indicated their  
26 willingness to name an additional class representative, though  
27 they think it unnecessary.  
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1 Finally, Samsung has failed to identify substantial grounds  
2 for a disagreement. Samsung's strong disagreement with the  
3 Court's decision does not fulfill this statutory requirement.  
4 Mateo, 805 F. Supp. at 800. While it is plausible that another  
5 court may have arrived at a different decision on the question of  
6 Westell's standing, the grounds for disagreement are not  
7 substantial. There is no established split of authority among the  
8 circuits, nor clearly conflicting decisions by the Ninth Circuit,  
9 which merit a departure from the general rule that only final  
10 judgments are appealable.  
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12 CONCLUSION

13 Accordingly, the Court DENIES Samsung's motion for  
14 certification. Docket No. 1251.

15 IT IS SO ORDERED.

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18 Dated: 1/25/2011

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CLAUDIA WILKEN  
United States District Judge